

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	CSR-6135-A
	)	
Family Stations, Inc.	)	
	)	
Petition For Modification of the Sacramento-	)	
Stockton-Modesto, California DMA	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: October 30, 2003**

**Released: November 3, 2003**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Family Stations, Inc., (“FSI”) licensee of station KFTL (Ch. 64), Stockton, California (“KFTL” or “Station”), filed the above-captioned petition for special relief<sup>1</sup> seeking to modify the Sacramento-Stockton-Modesto, California designated market area (“DMA”) to include ninety nine communities located within the San Francisco-Oakland-San Jose, California DMA.<sup>2</sup> An Opposition to this Petition was filed by Comcast and KFTL filed a reply. After examining the record, we grant the Petition, in part, and deny it, in part.

**II. BACKGROUND**

2. Pursuant to Section 614 of the Communications Act and the rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues* (“Must Carry Order”), commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station’s market.<sup>3</sup> A station’s market for this purpose is its “designated market area,” or DMA, as defined by Nielsen Media

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<sup>1</sup>FSI notes that it is filing the instant Petition after the Commission dismissed, without prejudice, an earlier filed Petition for Special Relief seeking to add to KFTL’s market certain cable communities which were served by AT&T Broadband before it merged with Comcast. *See Family Stations, Inc.*, 17 FCC Rcd 22668 (MB 2002). Among the reasons the Commission dismissed the earlier-filed petition was that it was unclear which cable communities were subject to the request. *Id.* FSI asserts that it has rectified the inconsistencies noted by the Commission in the instant Petition. *See* FSI Petition at 1.

<sup>2</sup>The communities requested for inclusion in the instant Petition are listed in Appendix A.

<sup>3</sup>8 FCC Rcd 2965, 2976-2977 (1993).

Research.<sup>4</sup> A DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, both over-the-air and cable television viewing are included.<sup>5</sup>

3. Under the Act, however, the Commission is also directed to consider changes in market areas. Section 614(h)(1)(C) provides that the Commission may:

... with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section.<sup>6</sup>

In considering such requests, the 1992 Cable Act provides that:

... the Commission shall afford particular attention to the value of localism by taking into account such factors as –

- (I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;
- (II) whether the television station provides coverage or other local service to such community;
- (III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community;
- (IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.<sup>7</sup>

The legislative history of the provision states that:

where the presumption in favor of [DMA] carriage would result in cable subscribers losing access to local stations because they are outside the [DMA] in which a local cable system operates, the FCC may make an

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<sup>4</sup>Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. *See* 47 U.S.C. §534(h)(1)(C). Section 76.55(e) requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. 47 C.F.R. § 76.55(e). *See Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, 14 FCC Rcd 8366 (1999) ("Modification Final Report and Order").

<sup>5</sup>For a more complete description of how counties are allocated, *see* Nielsen Media Research's *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

<sup>6</sup>47 U.S.C. §534(h)(1)(C).

<sup>7</sup>*Id.*

adjustment to include or exclude particular communities from a television station's market consistent with Congress' objective to ensure that television stations be carried in the area in which they serve and which form their economic market.

\* \* \* \*

[This subsection] establishes certain criteria which the Commission shall consider in acting on requests to modify the geographic area in which stations have signal carriage rights. These factors are not intended to be exclusive, but may be used to demonstrate that a community is part of a particular station's market.<sup>8</sup>

In adopting rules to implement this provision, the Commission indicated that requested changes should be considered on a community-by-community basis rather than on a county-by-county basis, and that they should be treated as specific to particular stations rather than applicable in common to all stations in the market.<sup>9</sup>

4. In the *Modification Final Report and Order*, the Commission, in an effort to promote administrative efficiency, adopted a standardized evidence approach for modification petitions that requires the following evidence be submitted:

(A) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market.

(B) Grade B contour maps delineating the station's technical service area and showing the location of the cable system headends and communities in relating to the service areas.

Note: Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit.<sup>10</sup>

(C) Available data on shopping and labor patterns in the local market.

(D) Television station programming information derived from station logs or the local edition of the television guide.

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<sup>8</sup>H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

<sup>9</sup>*Must Carry Order*, 8 FCC Rcd at 2977 n.139.

<sup>10</sup>The Longley-Rice model provides a more accurate representation of a station's technical coverage area because it takes into account such factors as mountains and valleys that are not specifically reflected in a traditional Grade B contour analysis. In situations involving mountainous terrain or other unusual geographical features, Longley-Rice propagation studies can aid in determining whether or not a television station actually provides local service to a community under factor two of the market modification test.

(E) Cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.

(F) Published audience data for the relevant station showing its average all day audience (i.e., the reported audience averaged over Sunday-Saturday, 7 a.m., or an equivalent time period) for both cable and noncable households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.<sup>11</sup>

Petitions for special relief to modify television markets that do not include the above evidence shall be dismissed without prejudice and may be re-filed at a later date with the appropriate filing fee. The *Modification Final Report and Order* provides that parties may continue to submit whatever additional evidence they deem appropriate and relevant.

### III. DISCUSSION

5. The issue before us is whether to grant KFTL's request to include the ninety nine requested communities within its television market. KFTL is assigned to the Sacramento-Stockton-Modesto DMA, while the cable communities are located within the San Francisco-Oakland-San Jose DMA. In support of its request, KFTL argues that its request should be granted because it meets the market modification criteria established in Section 614 of the Act.<sup>12</sup> In opposition, Comcast argues that the request should be rejected because a grant of KFTL's market modification request would effectively eviscerate the distinction between the Sacramento DMA and the San Francisco DMA in direct conflict with Commission policy prohibiting such blurring of market assignments.<sup>13</sup>

6. **Historic Carriage.** KFTL asserts that it meets the historic carriage factor because other stations, including the top four network stations, from the Sacramento DMA have been historically carried on Comcast's systems.<sup>14</sup> Comcast responds that despite more than 15 years of operation, KFTL has never been carried in any of the cable communities. Comcast further states that very few of the 99 cable communities it serves actually carry even a single Sacramento DMA station.<sup>15</sup> Comcast asserts that the grant of KFTL's Petition would place the Station at an unfair competitive advantage vis-à-vis the other Sacramento DMA stations which do not have mandatory carriage rights in the cable communities. In Reply, KFTL asserts that the Act requires the Commission to consider carriage of other market stations under the historical carriage factor, and in any event, even if the Station could not demonstrate historic carriage, it is inconsequential because of its specialty station status.<sup>16</sup>

7. **Local Service.** KFTL asserts that it provides predicted City Grade, Grade A, or Grade B signal contour coverage over each of the cable communities, with 88 of the 99 communities situated

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<sup>11</sup>47 C.F.R. § 76.59(b).

<sup>12</sup>Petition, *passim*.

<sup>13</sup>Opposition at 3.

<sup>14</sup>Petition at 10.

<sup>15</sup>Opposition at 11.

<sup>16</sup>Reply at 16.

within the Station's City Grade signal contour. KFTL states that it is close in proximity to the cable communities, averaging just 29 miles from the Station's transmitter to such communities. KFTL adds that its city of license, Stockton, is linked to the cable communities by major Interstate and State highways. KFTL asserts that its transmitter site and studio both are located within the San Francisco DMA. Moreover, the transmitter site is the same site used by a television station licensed to the San Francisco DMA (*i.e.*, KTNC-TV, Concord, California), and KFTL's studio is located in San Leandro, one of the cable communities.<sup>17</sup>

8. Comcast asserts that the predicted Grade B contour map submitted by KFTL fails to take into account terrain features relevant to the market. Comcast submits, based upon a Longley-Rice Grade B analysis, that there are significant gaps in coverage, likely caused by mountains and other geography, in nearly all of the counties where the cable communities are located.<sup>18</sup> Comcast notes that several of the cable communities, such as those located in and around Oakland, appear to be beyond KFTL's Grade B reach. As for geographic distance, Comcast asserts that Stockton is, on average, more than 58 miles away from the cable communities. Comcast adds that KFTL has inadequately explained how the identified highways within the two markets establish any significant nexus between KFTL and the cable communities. In Reply, KFTL asserts that a Longley-Rice analysis shows that the Station provides at least actual Grade B signal service to each of the named cable communities and generally repeats its assertions regarding proximity to those communities.<sup>19</sup>

9. KFTL asserts that it provides unique locally-based cultural and ethnic programming targeting the Vietnamese, Russian, and Chinese immigrant population in the cable communities.<sup>20</sup> KFTL adds that it also airs home shopping and religious programming in an English language format. KFTL states that all the Station's officers and employees, as well as the corporate head of Family Stations, live and work in the cable communities.

10. Comcast asserts that Univision Communications is in the process of buying KFTL and recently announced its plans to run the Station as an affiliate of its general, Spanish-language TeleFutura network.<sup>21</sup> Comcast states that on April 29, 2003, approximately one month after KFTL filed the instant Petition, the Station filed with the Commission a request to assign the station to Univision Communications. According to Comcast, Family Station's announced sale of KFTL to Univision Communications represents a material change in the facts and circumstances upon which the Petition is based. Comcast asserts that KFTL's conspicuous failure to notify the Commission of this pending transaction constitutes an omission of "decisional significance" in this market modification request, particularly where the Petition heavily relies on the current programming, production, and management of KFTL as the basis for granting its market modification request.<sup>22</sup> KFTL asserts that, since there is no guarantee that the Commission will grant the KFTL application or that the parties will consummate the assignment, it would be unfair to base the outcome of this case on speculation.<sup>23</sup> KFTL adds that a

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<sup>17</sup>Petition at 2.

<sup>18</sup>Opposition at 13.

<sup>19</sup>Reply at 5 and Exhibit 1.

<sup>20</sup>Petition at 5-8. In its Petition, KFTL describes, in-depth, the generalized Asian language programming it broadcasts.

<sup>21</sup>Opposition at 2.

<sup>22</sup>*Id.*

<sup>23</sup>Reply at 3.

possible change in programming at some future date would not alter the fact that the Station is still local in the cable communities for purposes of the market modification criteria.

11. Comcast argues that carriage of KFTL, under its present ownership, would be inappropriate because the Station's programming would largely duplicate that of San Francisco station, KCNS (Ch. 38), which is also a Shop-at-Home affiliate.<sup>24</sup> Comcast asserts that while KFTL's petition downplays its shopping affiliation, Shop-at-Home programming constitutes the bulk of its broadcast day (in excess of 15 hours of home shopping programming a week). The operator suggests that if KFTL actually serves the San Francisco DMA, Shop-at-Home would not have affiliated with KFTL, given the local presence of its owned and operated affiliate KCNS.<sup>25</sup> Comcast adds that it is not required to carry two affiliates of the same network under the Commission's rules. In any event, Comcast argues, none of the current programming broadcast by KFTL, and cited to in its Petition, focuses on any of the cable communities at issue.<sup>26</sup> In response, KFTL states that the evidence it has submitted demonstrates that it provides the cable communities with unique and targeted programming.<sup>27</sup> KFTL also states that it duplicates, at most, 49 percent of KCNS's programming. According to the Station, this duplication is not substantial, and in any event, this point should not be a bar to the grant of its petition.<sup>28</sup>

12. **Carriage of Other Television Stations.** KFTL states that the fact that Comcast carries other stations from the Sacramento DMA demonstrates the belief of both the television stations and cable systems involved that there is a nexus between Sacramento DMA broadcasters and the cable communities.<sup>29</sup> It also states that its programming is unavailable on other San Francisco stations. Comcast argues that the Station does not provide any unique programming not heretofore available as there are San Francisco DMA stations that carry home shopping programming, religious programming, and Asian language programming. Comcast states that it carries such stations on its cable systems as well as several other network television stations.<sup>30</sup>

13. **Viewership.** KFTL notes that it does not have ratings in the cable communities, but explains that the lack of audience is the result of the Station being a specialty station which broadcast home shopping, foreign language, and religious programming.<sup>31</sup> Comcast asserts that KFTL's lack of ratings or other indicia of viewership should not be discounted because of its claim to be a specialty station. In this circumstance, Comcast argues that the Station does not merit specialty station status on the basis of its limited foreign language programming.<sup>32</sup>

14. The use of designated market areas is intended "to ensure that television stations be carried in the areas which they service and which form their economic market."<sup>33</sup> The market

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<sup>24</sup>Opposition at 6.

<sup>25</sup>*Id.*

<sup>26</sup>*Id.* at 15.

<sup>27</sup>Reply at 8-9.

<sup>28</sup>*Id.* at 13.

<sup>29</sup>Petition at 12.

<sup>30</sup>Opposition at 17.

<sup>31</sup>Petition at 12.

<sup>32</sup>Opposition at 18.

<sup>33</sup>H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

modification provisions of the Act are not to be interpreted in such a manner as to permit broadcast stations to reach cable system communities that they otherwise could not serve. It is evident that Nielsen, in its assignment of KFTL to the Sacramento DMA, has concluded that the Station is part of that market. In the majority of communities at issue, KFTL only meets specific non-programming elements of the local service market modification factor. In none of the cable communities does KFTL show any viewership and, other than generalized statements about its current programming, the Station has not shown that any of its programming has a local nexus to the communities. The fact that the Station may soon change ownership, as well as programming, does not warrant a different conclusion because we must decide the case based on current evidence, not what may happen in the future.

15. We note that the Commission has recognized that specialty stations, such as KFTL, often fail to meet the historic carriage factor and often have no appreciable audience shares due the nature of their programming. In this instance, KFTL argues that given its status as a specialty station, its lack of historic carriage and viewership should be given little weight. We agree. In analyzing a specialty station's request to modify its television market, historical carriage and local viewership are not as important in the analysis. However, while these factors are not controlling, we cannot completely disregard them given our holistic approach to market modification cases such as this one.

16. The Commission has stated repeatedly that the "fact that a station is new or of specialized appeal does not mean that its logical market area is without limits or that it should be exempt from the Section 614(h) market modification process."<sup>34</sup> KFTL's signal coverage over many of the requested communities, therefore, does not in and of itself necessarily entitle it to carriage. In order to make an appropriate determination, we have to look at a combination of factors, including the Station's technical coverage, its geographic proximity to the cable communities, and any strong ties to the areas at issue. No one factor has more relevance than another. In this instance, forty three San Francisco cable communities may be considered part of KFTL's economic market. These communities, recited below, are located in Alameda and Contra Costa Counties, which both abut San Joaquin County where the Station's city of license is located. They qualify for inclusion because they are geographically proximate to the Station, fall within KFTL's City Grade contour, and are easily accessible from the Station by car or mass transit. Moreover, KFTL's studio is located in San Leandro, one of the cable communities. As a result, KFTL's request for inclusion of these cable communities will be granted.

17. For the remaining cable communities, KFTL's request is denied. While the Station may provide technical coverage to these areas, there are mitigating factors that nullify this attribute. For example, there are major waterways that separate the Station from communities in San Francisco, Marin, San Mateo, and Sonoma Counties. This geological factor makes it more difficult for residents in those counties to travel to businesses that may advertise on the Station and are located in Stockton or nearby communities in San Joaquin County. The cable communities in Napa and Santa Clara Counties could also be considered geographically distant from the Station's City of License. Moreover, the grant of the Petition to include the cable communities located in San Francisco, Marin, San Mateo, Sonoma, Napa, and Santa Clara Counties would completely eradicate the market distinctions established by Nielsen between the San Francisco and Sacramento DMAs, at least insofar as KFTL is concerned. Congress did not establish the market modification provisions to allow television stations to become regional superstations and we will not permit that to occur in this case.

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<sup>34</sup>See e.g., *MediaOne of Los Angeles, Inc.*, 15 FCC Rcd 19386, 19396 (2000); *Cable Satellite of South Miami, Inc.*, 13 FCC Rcd 298, 306 (1998); *Rifkin/Narragansett South Florida CATV Limited Partnership, d/b/a Gold Coast Cablevision*, 11 FCC Rcd 21090, 21104 (1996), *recon. denied*, 14 FCC 13788 (1999).

#### IV. ORDERING CLAUSES

18. Accordingly, **IT IS ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended, 47 U.S.C. § 534, and Section 76.59 of the Commission's rules, 47 C.F.R. § 76.59, that the captioned petition for special relief (CSR-6135-A), filed by Family Stations, Inc. **IS GRANTED** for the communities of Alameda, Albany, Antioch, Bay Point, Berkeley, Brentwood, Castro Valley, Clayton, Clyde, Concord, Concord Naval Weapons St., Crockett, Danville, Dublin, El Cerrito, Emeryville, Fremont, Hayward, Hercules, Kensington, Lafayette, Livermore, Martinez, Moraga, Newark, Oakland, Oakley, Orrinda, Piedmont, Pinos, Pittsburg, Pleasant Hill, Pleasanton, Port Costa, Richmond, Rodeo, San Leandro, San Lorenzo, San Pablo, San Ramon, Sunol, Union City, and Walnut Creek, and **IS OTHERWISE DENIED**.

19. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.<sup>35</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division  
Media Bureau

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<sup>35</sup>47 C.F.R. 0.283.



**APPENDIX A**

Alameda  
Albany  
Antioch  
Bay Point  
Belmont  
Belvedere  
Berkeley  
Brentwood  
Brisbane  
Broadmoor  
Burlingame/Burlingame Hills  
Calistoga  
Campbell  
Castro Valley  
Clayton  
Clyde  
Colma  
Concord  
Concord Naval Weapons Station  
Corte  
Cotati  
Crockett  
Cupertino  
Daly City  
Danville  
Dublin  
East Palo Alto  
El Cerrito  
Emeryville  
Fairfax  
Foster City  
Fremont  
Hayward  
Hercules  
Hillsborough  
Kensington  
Ladera  
Lafayette  
Larkspur  
Livermore  
Los Altos  
Los Gatos  
Los Trancos Woods  
Marin City  
Martinez  
Menlo Park  
Mill Valley  
Millbrae

Milpitas  
Monte Sereno  
Moraga  
Napa  
Newark  
Oakland  
Oakley  
Orinda  
Pacifica  
Palo Alto  
Petaluma  
Piedmont  
Pinole  
Pittsburg  
Pleasant Hill  
Pleasanton  
Port Costa  
Portola Valley  
Redwood City  
Richmond  
Rodeo  
Rohnert Park  
Ross  
San Anselmo  
San Carlos  
San Francisco  
San Jose  
San Leandro  
San Lorenzo  
San Mateo  
San Pablo  
San Rafael  
San Ramon  
Santa Clara  
Santa Rosa  
Saratoga  
Sausalito  
Sebastopol  
Sonoma  
South San Francisco  
St. Helena  
Sunnyvale  
Sunol  
Temelec  
Tiburón  
Treasure Island Naval Station  
Union City  
Walnut Creek  
Windsor

Woodside  
Yountville

